IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Bail Appl..No. 5441 of 2007()

CRMP.2078/2007 of DISTRICT COURT, ALAPPUZHA
CRIME NO.239/2007 OF AMBALAPUZHA POLICE STATION, ALAPPUZHA

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PETITIONER/ACCUSED

RAJESH, AGED 22 YEARS, S/O.LATE RAJAN,
SARASWATHY MANDIRAM, 3RD WARD,
THAKAZHI PANCHAYATH.

BY ADV. SRI.GEORGE MATHEW

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
CIRCLE INSPECTOR OF POLICE,
POLICE STATION, AMBALAPUZHA, THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5441 of 2007

Dated this the 12th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. There are altogether three accused persons. Accused 2 and 3 have already been arrested. The accused persons face allegations inter alia under Sections 452 and 308 read with 34 I.P.C. The crux of the allegations against the petitioner is that he indulged in the obscene conduct of lifting his clothes and showing his private parts to women occupants of the neighbouring house with whom there were disputes. They took objections to the course of conduct adopted by the petitioner. As a retaliation, the petitioner trespassed into the house of the neighbour and allegedly inflicted serious injury by hitting the victims with an iron rod. The incident had taken place on 10/6/2007. The victim was taken to the doctor immediately after the occurrence. The allegations in a nut shell have been stated to the doctor. Lacerated wound of size 6 x 1 cm over the scalp near the vertex is the injury suffered by one of the victims.

Investigation is in progress. The petitioner was not available for arrest. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations against the petitioner are totally false. The de facto complainant's husband is a police official and hence she wields considerable influence and clout with the police. Because of such influence, totally false allegations have been raised against the petitioner. The petitioner may be saved of the trauma of undeserved arrest and detention. The petitioner shall co-operate with the investigating officer , it is submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that at the moment there is absolutely no material to doubt or suspect the version of the de facto complainant. Tell tale injuries have been suffered by the victims. In these circumstances, the petitioner may be directed to resort to the ordinary course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail.

4. I find merit in the opposition by the learned Public Prosecutor. It is not necessary for me to embark on a detailed

discussion about the acceptability of the allegations and the credibility of the data collected. Suffice it to say that on an anxious consideration of the entire gamut of materials, I am not persuaded to agree that this is a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked. The petitioner, I agree with the learned Public Prosecutor, must appear before the learned Magistrate and seek regular bail in the ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007